In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 8692 of 2006

Date of Decision: 26.03.2007

Varinder Singh and others

…Petitioners

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Mohan Jain, Advocate,
for the petitioners.

Ms. Ritu Bahri, Deputy Advocate General, Haryana,
for respondent Nos. 1 to 4.

Mr. J.K. Sibal, Senior Advocate, with
Mr. Sapan Dhir, Advocate,
for M/s Haryana Organics-Intervener.

JUDGMENT

M.M. KUMAR, J.

A number of allottees of L-14A liquor Licence for sale of liquor at various places in the respondent State of Haryana, have filed Civil Writ Petition Nos. 8692 of 2006 (Varinder Singh and others v. State of Haryana and others), 8524 of 2006 (Raj Kumar v. State of Haryana and another) and 8698 of 2006 (Pritam Singh and others v. State of Haryana and others) by invoking jurisdiction of this Court under Article 226 of the Constitution in which prayer for quashing of circulars/letters dated 5.5.2006 (P-2 and P-3) concerning distribution of allotted quota of country liquor district-wise/distillery-wise on proportionate basis for the licensing year 2006-2007. It has also been prayed that direction be issued to the respondents restraining them from enforcing the impugned circulars dated 5.5.2006 (P-2 and P-3) on the ground that those circulars have imposed undue restriction with regard to lifting of supply of country liquor only from specified distillery. The principal ground of challenge is that the impugned circulars are contrary to the conditions and terms of allotment of Licence for the year 2006-2007 (P-1) and also contrary to the Punjab Excise Act, 1914 (as applicable to Haryana) (for brevity, 'the Act') and the Haryana Liquor Licence Rules, 1970 (for brevity, the 1970 Rules).

In order to provide a perspective to the issue raised, few facts may first be noticed, which are being referred from C.W.P. No. 8692 of 2006. For the licencing year 2006-2007, the respondent State of Haryana deviated from the policy of auction of L-14A liquor licence and allotted the same by way of draw of lots. The petitioners

in all the aforementioned petitions had succeeded in the draw of lots. They were issued L-14A liquor licence (P-1) for the period commencing from 1.4.2006 to 31.3.2007. The allotment of liquor licence by way of draw of lots is regulated by the provisions of the Act and the 1970 Rules. The petitioners have asserted that by issuance of licence it was held out to them that they could obtain supply of liquor from L-13 licence holder and wholesale dealers. The supply could also be obtained from those licensed holder distilleries which were situated within 200 Kms of the boundary of the State of Haryana. In that regard reliance has been placed on clause 33 of the Conditions and Procedure incorporated in Annexure P-1. It is claimed that at the time of draw of lots it was made clear to the petitioners that they could have supply of country liquor from any distillery in the State of Haryana or a licensed distillery situated within 200 Kms. of the limits of the State. After succeeding in draw of lots and obtaining liquor licences the petitioners started obtaining supply of liquor by purchase from wholesale dealers of their choice implying that those who are selling more popular brands or better quality products were preferred by them. It is claimed that there was restriction imposed by allocation of quota of various brands from various distilleries as has been done by circulars dated 5.5.2006 (P-2 and P-3) at the time of grant of licences on 1.4.2006. The grievance made with regard to the circulars issued on 5.5.2006 (P-2 and P-3) is that these circulars have illegally imposed conditions of rationing of supply only from selected wholesale liquor vends holding L-13

licence and every licence holder is allowed to lift specified quota. It is complained that the respondent State, in pursuance to the aforementioned circulars is contemplating and compelling the petitioners to lift their supplies from 6 specified distilleries proportionately roughly to the extent of 15% from each distillery confined to the respondent State of Haryana. It has been asserted that that once a binding contract between the petitioners and the respondent State had been concluded on 1.4.2006, no deviation or modification of such a contract is permissible throughout the period of operation of the licence. The petitioners have also alleged that there has been no restriction of quota imposed on them by the terms and conditions (P-1) with regard to lifting of stocks confining them only to specified distilleries and that the petitioners were free to purchase their supplies either from wholesale dealers holding L-13 licence or from the distilleries of their choice. The petitioners have claimed that they are being compelled to lift and sell sub-standard liquor from the nominated distilleries in the State of Haryana by issuing permit in respect thereof despite the fact that the liquor from those distilleries have no market. It is alleged that the impugned circulars have been issued at the hands of a lobby which is against the system of draw of lots for their vested interests. It is also alleged that the respondents have exceeded their jurisdiction while issuing the impugned circulars on 5.5.2006 (P-2 and P-3). According to the petitioners, the implementation of quota, as provided by the impugned circulars, from specified distilleries would result into

payment of excise duty even on the un-lifted quota, which would be against the principles of natural justice.

The stand of the respondents in their reply is that the sale of liquor in the respondent State is controlled by them which is to ensure supply of quality liquor and exclusion of supply of illicit/spurious liquor. The Financial Commissioner under Section 8 of the Act, is under obligation to control the Excise Administration and exercises various powers. Under Section 59 of the Act, the Financial Commissioner is empowered to frame rules regarding sale of intoxicants and accordingly '1970 Rules' have been framed. The excise policy for the year 2006-2007 was approved by the State Government prescribing overall limit of quota along with the number of outlets which respondent No. 2 i.e. Excise and Taxation Commissioner Haryana had to implement. It is claimed that respondent No. 2 issued a public notice, published in leading national and regional dailies on 1.3.2006, which is aimed at providing smooth and un-interrupted supply of liquor to the retail licensed outlets. Through the aforementioned notice, applications from reputed distilleries located in Haryana or in any other State, located within 200 Kms. of the boundaries of Haryana were invited to ensure supply of 495 lakh proof liter of double distilled spiced pot country liquor of 50^{o} proof strength for the year 2006-2007. The Excise and Taxation Commissioner is stated to have approved six distilleries located in the State of Haryana, vide order dated 28.3.2006, namely, (1) Haryana Distillery, Yamunanagar; (2) Haryana Organics, Smalkha, Panipat;

(3) Associated Distilleries Ltd., Hisar; (4) Frost Falcon Distilleries Ltd., Jahari Sonepat; (5) Ashoka Distilleries and Chemicals Pvt. Ltd., Hathin, Faridabad; and (6) Panipat Coop Distillery Unit, Panipat. The respondents have placed reliance on condition No. 33 of the licence (P-1) to claim that the approval to the distillery located within 200 Kms of the limits of the State has to be granted by the Commissioner and thereafter the distilleries were to be granted licence for wholesale outlets of country liquor under the '1970 Rules', which was subject to the following conditions:-

> "a) The approved distilleries shall be required to open wholesale outlets of country liquor (L-13) in every district headquarter of the state to maintain regular and ready supply of country liquor to the retail liquor outlets of country liquor (L-14A).
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> b) The supplies to the retail of country liquor (L-14A) shall be made from the wholesale outlets of country liquor (L-13) located in the district on permits/passes issued by the respective Deputy Excise and Taxation Commissioner (Excise) of the districts.
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> c) The stock of country liquor at the stage of L-13 shall be duty paid.
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> d) The wholesale outlets of country liquor (L-13) shall maintain a ready stock equal to the five percent of the fixed annual quota of the respective district.

e) The wholesale outlets of country liquor (L-13) shall obtain permits/passes issued by the respective Deputy Excise and Taxation (Excise) of the districts.

f) The annual license fee for the wholesale outlets of country liquor (L-13) shall be Rs. Twenty five thousand per outlet per district to be paid in cash or by bank draft in the name of Deputy Excise and Taxation (Excise) of the district.

g) The approved distilleries shall be required to deposit a security amount of Rs. 1 Lakh per L-13 outlet per district in the form of bank draft in the name of Deputy Excise and Taxation (Excise) of the respective district for the performance of contract of supply of double distilled, spiced, pot, country liquor, 50 degrees proof strength in bottled form.

h) The proof of having declared an approved distillery by the Excise & Taxation Commissioner, Haryana.

i) The licenses for the wholesale outlet of the country liquor (L-13) shall be granted by the Excise & Taxation Commissioner.

j) The approved distilleries shall be bound to abide by the rules and provisions laid down in the Punjab Excise Act, 1914 and rules framed there under.

k) The approved distillery shall, in addition to maintaining the required records and furnishing of statements given in the rules ibid shall in addition be required to e-mail via the internet to the Excise and Taxation Commissioner, Haryana at haryanatax.com daily figure showing the production and dispatch of country liquor."

The following averment made by the petitioners in para 3 of their writ petition has been categorically denied:-

" **At the time of draw of lots it was made clear to the prospective allottees of the vends that anybody can purchase country liquor from any distilleries in the state of Haryana or within 200 kilometers of the limits of the State."**

The respondents have claimed that neither such an announcement was made at the time of draw of lots and allotment nor any such assurance verbal or in writing, was given that the prospective allottee could purchase country liquor from any distillery in the State of Haryana or from a distillery located within 200 Kms. of the limits of the State of Haryana. It is claimed that it was never announced that prospective allottees of the L-14A licence were free to draw their supplies of country liquor from any distillery in the State and the writ petition is liable to be dismissed on the short ground of making misrepresentation.

The respondents have claimed that the impugned circulars dated 5.5.2006 (P-2 and P-3) have been issued fixing the monthly quota of country liquor for the year 2006-2007 district-wise/distillery-wise. It was to ensure that no wholesale vend of country liquor goes dry in the State and the petitioners have been given the option to lift 10% of the annual quota of country liquor of their choice. The object of the circulars is stated to be lifting of supply of country liquor from approved distilleries to the retail licences like L-14 without any interruption and without the effect of depriving any brand. It is also claimed that on account of short and deficient supply of liquor, illicit distillation starts and bootleggers come in operation, which the impugned circulars are aimed to check. The respondents have also made an attempt to ensure that each distillery from where supply of liquor is to be made to the whole-seller (L-13) and then to the retail outlets (L-14A) do not suffer from any capacity limitation, over-burdening them or clog them due to all retail venders rushing to one distillery/one whole-seller. The allotted annual quota has been proportionately distributed among all the distilleries so that liquor vends in all parts of the district/State obtain smooth and regular supply without depriving consumers of various brands and quantity. It has also been claimed that such a policy of distribution of quota has not been issued for the first time, which is stated to be in operation for the last many years and has achieved commendable results. In support of their claim, the respondents have placed on record such like policies commencing from the year 2002-

2003 (R-1 to R-4). The respondents have claimed that respondent No. 4 being the specified officer has issued permits to the petitioners from 1.4.2006 to 31.5.2006 permitting them to lift their quota from wholesale outlets (L-13) of different distilleries located in the district to streamline the distribution and ensuring uninterrupted/smooth supply of liquor. The details of permits issued to the petitioners distillery-wise are as under:-

Sr. No.	Name of the petitioner & licensee	Annual quota	Monthly quota	Haryana Distillery, Y.Nagar	Ashoka Distillery Hathin	Associated Distillery Hissar	F.F.D. Jahari	Haryana Organics Samalkha	Panipat Coop., Panipat.
1.	Varinder Singh,L-14A Bahri	21738	1811	2520	Nil	Nil	Nil	Nil	Nil
2.	Sanjay Kumar,L-14A, Kirmich	21738	1811	3330	NIL	Nil	1035	Nil	Nil
3.	Gurnam Singh, L-14A Ladwa	36230	3119	3150	NIL	1125	450	675	NIL
4.	Surinder Kumar Gaba, L-14A Jyotisar	14492	1207	3375	NIL	450	NIL	NIL	NIL
5.	Prabhu Dayal, L-14A Teoker	21738	1811	2700	1687	NIL	NIL	NIL	NIL
6.	Dharam Singh, L-14A Kharindwa	21738	1811	2407	450	675	1125	112	NIL
7.	P.K. Sharma, L-14A Pipli II	36230	3019	7200	225	NIL	900	675	NIL
8.	P.K. Sharma, L-14A, Kishanpura	21738	1811	NIL	NIL	NIL	225	NIL	NIL
9.	Parmod Kumar, L-14A Bishangarh II	21738	1811	5625	NIL	NIL	225	1350	Nil

The respondents have claimed that the petitioners have not suffered any loss or harm on account of well regulated distribution system of supplies. Rather there is booming sale and lifting of adequate quota of liquor for their respective vends. It is claimed that the petitioners have not only lifted whole of their annual quota but have also lifted 50% of the additional quota, which is permitted to be lifted without payment of any additional licence fee, in terms of condition No. 54/55 of the licence L-14A (P-1). It is appropriate to mention here that an additional affidavit dated 21.2.2007, was permitted to be filed by the respondents in C.W.P. No. 8698 of 2006 giving details of quota lifted by the petitioners in that petition. The details as given in Annexure-I of the aforementioned additional affidavit, reads as under:-

"DISTILLERYWISE LIFTING OF QUOTA OF COUNTRY LIQUOR DURING THE PERIOD 01.04.2006 TO 31.1.2007 BY THE PETITIONERS IN CWP NO. 8698 OF 2006 (KARNAL DISTRICT)

Sr. No.	Name of the vend/ licensee/ petitioners	Annual Quota	Addl Quota 50%	Total Quota	Quota lifted 1.4.2006 to 31.1.2007
1	Pritam Singh S/o Sh. Lala Ram L-14/A Aungand	6165	3082.5	9247.5	9063
2	Brajesh Kumar S/o Sh. Jagbier Singh L-14A Phoosgarh	21700	10850	32550	22500
3	Ashok Kumar S/o Sh. Nanu Ram L-14A Mangalpur	21700	10850	32550	31950
4	Nanu Ram S/o Sh. Sukar Ram L-14A Tikri Kailash	21700	10850	32550	28849.5

Haryana Distillery, Yamuna Nagar	Ashoka Distillery, Hathin	Associated Distillery, Hissar	Frost Falcon Distillery, Jhari	Haryana Organic, Samalkha	Panipat Coop Distillery, Panipat
3487.5	1462.5	1750.5	675	225	1462.5

9225	2025	1350	5400	2250	2250
7875	8100	2025	8550	1800	3600
7474.5	4387.5	4275	1462.5	5850	5400

It has further been claimed that the policy has been uniformly applied by distribution of 90% of the country liquor equally amongst all the six approved distilleries and there is no violation of any terms/condition of the licence nor any provisions of the Act or the 1970 Rules.

At this stage it may be noticed that Civil Misc. Application No. 9787 of 2006 in C.W.P. No. 8692 of 2006, was filed under Order 1 Rule 10 read with Section 151 CPC by M/s Haryana Organics, a unit of Globus Agronics Limited, 5th K.M. Stone, Chulkana Road, Samalkha, District Panipat through its Manager, Public Relations Mr. Parvesh Chawla, claiming that they were necessary parties and deserved to be impleaded as respondent in the said writ petition. However, the aforementioned application was dismissed by a Division Bench of this Court, vide order dated 31.5.2006, which was challenged before Hon'ble the Supreme Court in Special Leave Petition (Civil) No. 10282 of 2006. Hon'ble the Supreme Court, vide order dated 27.6.2006, issued notice of the SLP and stayed further hearing in C.W.P. No. 8692 of 2006. The aforementioned S.L.P. later on was converted into Civil Appeal No. 133 of 2007 and while disposing of the same vide order dated 4.1.2007, Hon'ble the Supreme Court passed the following order:-

" Leave granted.

Having heard the learned counsel for the parties we are of the opinion that interest of justice would be subserved if the appellant herein is permitted to intervene in the writ petition. We place on record the statement made by Mr. S. Ganesh, learned senior counsel appearing on behalf of the writ petitioners – respondents that his client have questioned only the excise policy of the State of Haryana for the year 2006-07 to the effect as to whether a vendor can be compelled to buy the manufactured products only from some distilleries or not. In view of the fact that the State in exercise of its jurisdiction under the Excise Act has laid down the excise policy, we are of the opinion that it is not necessary for the appellant herein to file any counter affidavit in the writ petition. However, keeping in view the fact that the period during which the excise policy was to remain in force would come to an end on 31st March, 2007, we would request the High Court to hear out and dispose of the writ petition itself as expeditiously as possible, preferably within this month.

Learned counsel appearing on behalf of the appellant assures that no adjournment shall be prayed for before the High Court on behalf of his client. Mr. Ganesh, learned senior counsel further states that his

clients shall not place any special order against any individual manufacturer.

The appeal is disposed of with the aforementioned observations and directions."

Accordingly, we have allowed the aforementioned distillery to intervene.

Mr. Mohan Jain, learned counsel for the petitioners has argued that no circular incorporating new terms altering, varying, supplementing or otherwise adding to the terms and conditions already agreed between the parties at the time of grant of L-14A licence on 1.4.2006, could be permitted as the same would result into complete novation of a concluded contract. According to the learned counsel once the offer given by the petitioners was accepted by the respondent Department, a binding agreement had come into existence between the parties and the condition of auction becomes the terms of the contract which cannot be alterted lateron. In support of his submission, learned counsel has placed reliance on para 21 of the judgment of Hon'ble the Supreme Court in the case of **Har Shankar v. Deputy Excise and Taxation Commissioner, AIR 1975 SC 1121**. He has further submitted that the impugned circulars issued on 5.5.2006 (P-2 and P-3) can operate prospectively only in respect of the policy concerning year 2007-2008 and permitting such a circulars to be binding on the petitioners, who have obtained L-14A licences on 1.4.2006, would result into their retrospective operation, which is impermissible in law. In support of his submission, learned counsel

has placed reliance on para Nos. 55, 56, 57 and 62 of the judgment of Hon'ble the Supreme Court in the case of **Ashok Lanka v. Rishi Dixit, (2005) 5 SCC 598**. He has also placed reliance on para 12 of the judgment of Hon'ble the Supreme Court in the case of **Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation, (2000) 5 SCC 287**, to argue that the rules of the game after it had begun cannot be changed.

Mr. Mohan Jain, learned counsel for the petitioners, has further argued that the expression 'permit' has been defined by the Punjab Liquor Permit and Pass Rules, 1932 (for brevity, 'the 1932 Rules'), which have been framed under Section 58 of the Act. According to the learned counsel, clause (e) of sub-section (2) of Section 58 of the Act contemplates framing of rules regulating the period and localities for which, and, the persons, or classes of persons, to whom licenses, permits and passes for the vend by wholesale or by retail of any intoxicants could be granted. It could also frame rules regulating the number of such licenses which may be granted in any local area. He has then referred to the definition of expression 'permit', as used in Rule 1(a) of the 1932 Rules, which is confined to issuance of a No Objection Certificate by the specified officer of the district in respect of the destination but it does not empower him to authorise removal from the place of issue. The expression 'permit' has been defined as a permission authorising possession of liquor exceeding the limit of retail sale. He has also referred to the expression 'pass' as defined in Rule 1(b) of the 1932

Rules to mean a document which actually authorises the removal of liquor. According to the learned counsel, there is nothing in clause 33 of the terms and conditions of the licence L-14A (P-1), which may go to the extent of authorising the specified officer to issue permit in respect of lifting its supply from a particular distillery. He has also referred to Rule 38(15)(a) and (16) of the 1970 Rules to argue that once a licence L-14/L-14A is given then the licence holder is to get the supply of his requirement of country liquor from a person having licence to sell as wholesale in district concerned. The arguments appears to be that no condition of obtaining supply in a regulated manner has been imposed by the terms and conditions of licence L-14A (P-1) except that such a licensee was to lift his supply of country liquor from a person licensed to sell such liquor by wholesale in the district concerned. He has also placed reliance on para 26 of the Division Bench judgment of this Court in the case of **Ram Chander v. State of Haryana, 2006 (3) PLR 392**.

Ms. Ritu Bahri, learned Deputy Advocate General, Haryana and Mr. J.K. Sibal, learned senior counsel for the intervener, have argued that the contention of the petitioners is based on non-existent factual position. Both the learned counsel have referred to the averments made by the petitioners in para 3 and the corresponding reply in para 3 of the written statement filed by the respondents. The assertion made by the petitioners in para 3 of the petition is that at the time of draw of lots it was made clear to the prospective allottees of the liquor vends that they could purchase the country liquor from any

distillery in the State of Haryana. According to the learned counsel for the respondents in the corresponding para 3 of the written statement as well as in the preliminary submission it has been averred that no such announcement, clarification or statement was made by respondent No. 4 which may constitute a binding term of contract between the parties. The replication filed by the petitioner to the assertions made by the respondents does not improve the case of the petitioners as there is no supporting material to substantiate that any conditions were announced at the time of auction and the whole case is based on oral announcement. Therefore, whole case has been built on the foundation of sand and it is liable to be rejected.

Learned counsel have further referred to the additional affidavit, dated 21.2.2007, asserting that factually there is no basis for the petitioners to argue that on account of impugned circulars dated 5.5.2006 (P-2 and P-3) they have suffered any loss or the consumption of liquor allocated from a particular distillery has not been liked and rejected by the consumers. Our attention has been drawn to the table to show that annual quota of liquor allotted along with the additional quota has almost been exhausted by 31.1.2007. In respect of one Pritam Singh (petitioner in C.W.P. No. 8698 of 2006) the annual quota allotted was 6165 along with additional quota of 50% i.e. 3082.5 and the total quota comes to 9247.5 and by 31.1.2007, the aforementioned petitioner had lifted 9063. Therefore, it is suggested that there is no room for raising the argument that the impugned circulars have resulted into adverse effect on the business

transactions of the petitioners. On the aforementioned basis it has been argued that complaint regarding quality and source is totally unwarranted. Learned counsel for the respondents have further submitted that everyone has been treated alike and that no term of the contract has been violated, which may result into furnishing a cause of action to the petitioners to make any such complaint before this Court. According to the learned counsel, clause 33(2)(b) of the terms and conditions of the licence L-14A (P-1) makes this absolutely clear that supply to the retail outlets of country liquor i.e. L-14A is to be made from the wholesale outlets of the country liquor i.e. L-13 located in the district on permits/passes issued by the respective Deputy Excise and Taxation Commissioner of the district. It has been emphasised that once the specified officer issued a permit then the supply of country liquor is to be made by the wholesale outlet of country liquor (L-13) located in the district in respect of which pass has been issued. Therefore, clause 33(2)(b) has in no way been infringed especially when all have been treated alike.

The respondents have also placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574**, to argue that there is no blanket bar imposed on the State to change or alter the terms and conditions incorporated in a licence, if such alteration or deviation is in the interest of justice. It has been submitted that Article 19(1)(g) read with 19(6) of the Constitution do not confer any absolute right and a citizen has no fundamental right in the trade of liquor as a

beverage. Reliance in particular has been placed on sub-paras (g) and (h) of the conclusions recorded in para 60 of the judgment. Therefore, it has been submitted that as long as there is no discrimination, no complaint of violation of any terms and conditions could be made. They have also placed reliance on para 26 of the Division Bench judgment of this Court in the case of Ram Chander (supra) and argued that there is no arbitrariness or malafide imputable to the respondents for issuance of impugned circulars dated 5.5.2006 (P-2 and P-3).

After hearing learned counsel for the parties, pursuing the record with their able assistance and various judgments cited before us, we are of the considered view that these petitions are devoid of any merit. Firstly, the petitioners have based their claim on the averments made in para 3 asserting that the prospective allottees of the vends were free to have their supplies of country liquor from any distillery in the State of Haryana or a distillery situated within 200 Kms. of the boundaries of the State of Haryana. In the corresponding para 3 of the written statement there is a categorical denial of furnishing any such assurance oral or in writing, which might have been made to the prospective allottees including the petitioners at the time of draw of lots. The replication filed by the petitioner to the assertions made by the respondents does not improve the case of the petitioners as there is no supporting material to substantiate that any conditions were announced at the time of auction and the whole case is based on oral announcement.

Therefore, it has to be concluded on facts that no assurance has ever been given by respondent No. 4 to the petitioners to the effect that they could have their supply of country liquor from any licensed distillery situated throughout the State of Haryana or any other licensed distillery situated within 200 Kms. of the boundary of the State of Haryana. There is no such term and condition in Annexure P-1, which was issued to the petitioners at the time of issuance of licence. The reliance of the petitioners on clause 33 is also misplaced as there was no condition permitting the petitioners to lift the supply of their quota of country liquor from any distillery in the State of Haryana or outside the State of Haryana.

We are further of the view that in any case there is no absolute prohibition imposed on the State to change the terms and conditions of the licence even if any such term and condition is presumed to be in existence for the sake of argument. In that regard reliance could be placed on the judgment of Hon'ble the Supreme Court in the case of Khoday Distilleries Ltd. (supra), by keeping in view the principle that the rights granted under the Constitution are not absolute but are subject to implied limits on them which are made explicit by clauses 2 to 6 of Article 19 of the Constitution. According to para 56 of the judgment in Khoday Distilleries Ltd. case (supra) it has been held that in case no prohibition is introduced then all citizens could claim an equal right to carry on trade or business of potable liquor but such a right cannot be claimed against the State when it reserves to itself the exclusive rights to such trade or

business. However, when the State neither prohibits nor monopolises the said business, the citizens cannot be discriminated against one and another while granting licence to carry on such business. At the same time the equal right cannot be considered as a fundamental right. In the present case these principles are fully applicable because all the distilleries and the liquor vendors have been treated alike.

We are further of the view that the so called difference, as argued by the learned counsel for the petitioners, in the country liquor produced by various distilleries, allocated to the petitioners' for lifting of their respective quota, suffers from an inherent contradiction. Rule 37 of the 1970 Rules deals with general condition applicable to all licenses. Sub-rule (31)(a) also prescribes a uniform standard of country liquor. Sub-rule (31)(a) of Rule 37 of the 1970 Rules, reads as under:-

> "37(31) The licensee shall not sell spirit, except of the following conditions:-
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> (a) In the case of license for country spirit, the strength of ordinary spiced country liquor, special spiced country liquor and rum and gin shall respectively be 50 degree under proof and these shall have been bottled in accordance with the rules for bottling licenses contained in these rules."

A perusal of the aforementioned rules shows that the respondent State has applied uniform standard which is for every

licensee to follow and in the case of licence for country liquor the strength of ordinary spiced country liquor, special spiced country liquor and rum and gin shall respectively be 50 degree under proof and these are required to be bottled in accordance with the rules for bottling licenses as contained in the 1970 Rules. A perusal of sub-clause (2) of clause 33 of the terms and conditions (Annexure P-1) has also produced the same condition. If the aforementioned sub-clause (2) of clause 33 is read along with conditions (a) and (b) it becomes evident that the specified officer has been entrusted with the duty to issue permit/pass to regulate the supply, which ensures smooth distribution and supply in every part of the State. The aforementioned sub-clause (2) along with its conditions (a) and (b) are reproduced hereunder for facility of reference:-

> "2. It has been made open for the distilleries located in the State and those distilleries which are located within 200 kms of the limits of the State, to apply for the supply of doubled distilled, spiced, pot, country liquor, of 50 degrees proof strength, in bottled form, as per the conditions prescribed.
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> The approval to the distilleries shall be granted by the Excise & Taxation Commissioner. Thereafter these distilleries shall be granted licenses for wholesale outlets of country liquor (L-13) under the Haryana Liquor License Rules, 1970, as per the following conditions:-

a) The approved distilleries shall be required to open wholesale outlets of country liquor (L-13) in every district headquarter of the state to maintain regular and ready supply of country liquor to the retail liquor outlets of country liquor (L-14A).

b) The supplies to the retail of country liquor (L-14A) shall be made from the wholesale outlets of country liquor (L-13) located in the district on permits/passes issued by the respective Deputy Excise and Taxation Commissioner (Excise) of the districts."

The aforementioned clauses do not go to the extent that after issuance of permit or pass the licensee could lift the supply from anywhere. The issuance of permit or a pass for lifting the supply in accordance with the allocation of monthly quota provided by impugned order dated 5.5.2006 (P-2) and further breakup distillery-wise and district-wise distribution of quota (P-3) would not suffer from any unreasonable restriction warranting our interference, especially when all the licensee have been treated equal as per the view of Hon'ble the Supreme Court in the case of Khoday Distilleries Ltd. (supra) that the rights does not extend to the status of a fundamental right under Article 14 and 19(1)(g) of the Constitution of India.

The argument of the learned counsel for the petitioners that there was a condition in the licence incorporated at the time of draw of lots for the year 2006-2007 (P-1), giving complete liberty to

the licensees to lift the country liquor from any licenced distillery having L-13 licence or any licensee of L-13 licence, is liable to be rejected because the whole case has been built up on a castle of sand as the foundation has been laid on oral assurance given at the time of draw of lots, which has been controverted in para 3 of the written statement filed by the respondents. The replication filed by the petitioner to the assertions made by the respondents does not advance the case of the petitioner because oral declaration of condition of the draw of lot, would not be acceptable to us because there is nothing on record to substantiate the aforementioned allegation. In these circumstances the question of violation of such condition would not arise so as to attract the application of the judgments of Hon'ble the Supreme Court in the cases of Har Shankar (supra) and Ashok Lanka (supra). Therefore, we reject the submissions made by the learned counsel for the petitioners.

For the reasons aforementioned, these petitions fail and the same are dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 26, 2007
Pkapoor